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Calendar No. 262

101ST CONGRESS *1st Session*	SENATE	REPORT 101-142

EXTENSION OF THE DEFENSE PRODUCTION ACT

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1672

together with

ADDITIONAL VIEWS

SEPTEMBER 26 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

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101ST CONGRESS
1st Session

SENATE

REPORT
101-142

EXTENSION OF THE DEFENSE PRODUCTION ACT

SEPTEMBER 26 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1672]

INTRODUCTION

On September 20, 1989, the Senate Banking Committee marked up and ordered to be reported a bill to extend the expiration date of the Defense Production Act (DPA) from September 30, 1989 to September 30, 1990 and to authorize appropriations under the Act of $50 million for the Defense Department to carry out its existing DPA programs for an additional year.

BACKGROUND

The Defense Production Act, 50 U.S.C. app 2061 et seq., was initially enacted in 1950 to mobilize the Nation's productive capacity after the outbreak of the Korean War. The Act has been reauthorized and amended a number of times, most recently in 1986. When first enacted the DPA contained seven titles but after the war authorities in four of the Act's seven titles were permitted to expire. Presently, only three titles of the DPA are in effect, and they are due to expire on September 30, 1989 unless renewed.

Title I grants to the President the power to prioritize performance of specific contracts to meet urgent defense requirements, and to allocate resources to industries to optimize the production of defense materials. Title III authorizes the President to use loans, loan guarantees, purchase commitments, and grants to encourage con-

tractors to establish or expand activities to provide increased industrial capacity for defense needs. Title III programs are presently managed by the Department of Defense with the Air Force serving as executive agent. The bill authorizes $50 million for the Defense Department to continue its Title III programs during 1990.

Under Title VII the President is authorized to provide antitrust defenses to private entities conducting joint activities under voluntary agreements aimed at solving production and distribution problems impairing national defense preparedness. The creation of such voluntary agreements must be initiated by the President, and must be approved by the Attorney General and the Chairman of the Federal Trade Commission before any antitrust protections are accorded to the participants.

HISTORY OF THE LEGISLATION

Since the last renewal of DPA authorities in 1986, a number of reports have been issued by the Department of Defense, the Defense Science Board, the Center for Strategic and International Studies, and the Office of Technology Assessment expressing concern that the United States is experiencing a substantial decline in industrial sectors necessary to support defense production. A 1988 report entitled "Bolstering Defense Industrial Competitiveness" authored by the Under Secretary of the Department of Defense stated:

> Many basic industries of importance to defense production have declined, threatening the responsiveness of our industrial base. Left unchecked, such erosion could rob the United States of industrial capabilities critical to national security.

That report argued that certain industries such as semiconductors, telecommunications, and computers are of strategic importance because they are linked to so many other important elements of the industrial base.

Facing the expiration of basic DPA authorities this year, the Banking Committee had planned, in preparation for a multi-year reauthorization of the Act, to hold a series of hearings to examine such concerns and to determine whether the nation's industrial and technological base is adequate to ensure the nation's defense. Due to the need to devote most of its attention in 1989 to legislation dealing with the savings and loan crisis, the Committee has so far been able to hold only two hearings on the industrial base problem and its relationship to our national defense.

On July 11, 1989, the Committee heard from three former officials who had major responsibilities for ensuring the adequacy of our nation's national defense. These were: Mr. Frank Carlucci, former Secretary of Defense and presently Vice Chairman of the Carlyle Group in Washington, D.C.; Admiral Bobby Inman, former Deputy Director of the Central Intelligence Agency and presently Chairman and CEO of Westmark Systems, Inc. of Austin, Texas; and Dr. Robert Costello, former Under Secretary of Defense and presently at the Hudson Institute in Indianapolis, Indiana.

On July 19 the Committee heard from Mr. Robert Galvin, Chairman of the Board of the Motorola Corporation; Mr. Norman Augus-

tine, Chairman of the Board and CEO of the Martin-Marietta Corporation; and Mr. Stanley Pace, Chairman of the Board and CEO of the General Dynamics Corporation.

Under the circumstances, the Committee was unable to conduct a thorough review of concerns about our industrial base and to explore substantive DPA amendments which have been proposed to the Act. On July 24, 1989 Senator Dixon of the Banking Committee introduced S. 1379, a bill to make amendments to the authorities accorded to the President by the DPA. The Administration has also requested that a number of amendments be made to the DPA, including extension of basic DPA authorities.

In order to provide adequate time for additional hearings and a more thorough examination of the issues related to the DPA, the bill reported by the Committee simply reauthorizes the current law for 1 year. The Administration has written to the Committee supporting this extension.

SECTION-BY-SECTION ANALYSIS

Section 1 provides for an extension of the Defense Production Act for a period of one year from September 30, 1989 to September 30, 1990.

Section 2 authorizes appropriations of not more than $50 million for fiscal year 1990 to carry out existing DPA programs.

REGULATORY IMPACT STATEMENT

Pursuant to rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes it would result in no net increase in the regulatory burden imposed by the Government.

CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.

COST OF LEGISLATION

The Committee requested a cost estimate of this legislation under the provision of Section 403 of the Congressional Budget Act of 1974. The cost estimate of the Congressional Budget Office appears below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1989.

Hon. DONALD W. RIEGLE, JR.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for a bill amending the Defense Production Act of 1950, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 20, 1989.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Unassigned.

2. Bill title: A bill to amend the Defense Production Act of 1950.

3. Bill Status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 20, 1989.

4. Bill purpose: To extend the authorities provided under the Defense Production Act until September 30, 1990 and to provide authorizations for appropriation for Defense Production Act activities.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Authorization level	50	0	0	0	0
Estimated outlays	0	0	1	3	3

Basis for Estimate: This estimate assumes that funds will be appropriated for the full amount of the authorization and will be available for obligation by October 31, 1989.

The bill states fiscal year 1990 authorizations for appropriations for activities under Sections 301, 302, and 303 of the Defense Production Act (DPA). These sections allow the Defense Department to offer loans, loan guarantees, and purchase agreements to potential domestic vendors of goods used in the production of weapons and other items necessary for national defense. Presently, all of the projects planned and carried out under the DPA take the form of purchase agreements. Outlays are estimated assuming that the Department of Defense will continue their use of purchase agreements for DPA activities and are based on historical outlay rates.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO cost estimate: None.

9. Estimate prepared by: Barbara Hollinshead.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR PHIL GRAMM

The Defense Production Act, enacted under extraordinary circumstances, gives the President extraordinary powers over the civilian economy. Unfortunately, these powers are available to the President under very ordinary conditions. For example, the President's extensive powers to require rationing of any material or resource, under such conditions as he deems necessary, may be helpful and appropriate during wartime or national emergency, but the Act places no such restrictions or conditions upon their use. He may impose limited or extensive rationing merely upon his own order and upon his own finding that the rationed material is scarce, critical to the national defense, and that defense needs cannot be met without a resort to rationing. There is no review of these findings and no role for Congress.

Following is a summary of Presidential powers under Title I of the Defense Production Act. These are extensive powers, potentially encroaching upon the economic rights of every American citizen, powers which few would tolerate the exercise of short of national emergency. How many Americans realize that the age of rationing coupon books could return tomorrow merely by order of the President, without any Congressional ratification or even involvement? I believe that we have a duty to eliminate that possibility.

PRESIDENTIAL POWERS UNDER THE DEFENSE PRODUCTION ACT

What power does the President have?	How does the President invoke this power?	What checks are there on the power?
Set and enforce national economic priorities.—Require that performance under any contracts or orders (other than employment), by any person, be given priority over any other contract or order. Does not apply with respect to or affecting domestic energy supplies. (Sec. 101(a), (b))	By his own order, on his own findings that it is necessary or appropriate to promote the national defense and that the person is capable of performing the contract or order.	May not be used to control the general distribution of any material in the civilian market unless the President finds that the material is scarce and critical to national defense, and that defense requirements for the material cannot otherwise be met without significant civilian market dislocation. Otherwise, no restrictions in the Act.
Rationing (non-energy).—Allocate materials and facilities in such manner, upon such conditions, and to such extent as he deems necessary or appropriate to promote the national defense. Does not apply with respect to or affecting domestic energy supplies. (Sec. 101(a), (b))	By his own order.	May not be used to control the general distribution of any material in the civilian market unless the President finds that the material is scarce and critical to national defense, and that defense requirements for the material cannot otherwise be met without significant civilian market dislocation. Otherwise, no restrictions in the Act.

PRESIDENTIAL POWERS UNDER THE DEFENSE PRODUCTION ACT—Continued

What power does the President have?	How does the President invoke this power?	What checks are there on the power?
Energy rationing.—Require the allocation of, or the priority performance under contracts or orders (other than employment) relating to, supplies of materials and equipment in order to maximize domestic energy supplies. (Sec. 101(c), (b))	By his own rule or order, upon the making of the following findings: Such supplies are scarce, critical, and essential to maintain exploration, production, refining, transportation, or conservation of energy supplies, or the construction and maintenance of energy facilities; These goals cannot reasonably be accomplished without exercising this authority.	May not be used to control the general distribution of any material in the civilian market unless the President finds that the material is scarce and critical to national defense, and that defense requirements for the material cannot otherwise be met without significant civilian market dislocation. Otherwise, no restrictions in the Act.
Restrict private stockpiling.—With regard to any material (except with regard to or affecting energy supplies) designated by the President as a scrace material or a material the supply of which could be threatened, the President may prohibit accumulation of such material, in excess of reasonable business demands or personal or home consumption. He may also prohibit resale of such material at prices in excess of prevailing market prices. The President may prescribe such conditions on excess accumulation of such materials as he deems appropriate to carry out the objectives of the DPA. (Sec. 102, 106)	By designating, on his own order, which materials are covered by this provision. Such designation is to be published in the Federal Register.	The President may not use this authority to require gasoline rationing among classes of end-users. Otherwise, no restrictions in the Act (Sec. 105)

During Committee consideration of the renewal of Defense Production Act authorities I suggested an amendment to address this deficiency in the Act. While the imminent expiration of the DPA did not afford the Committee at that time with the opportunity to make appropriate changes in the law, I am hopeful that amendments to circumscribe the President's extraordinary powers to only extraordinary situations can be crafted during the review period provided by this brief renewal of the DPA.

I would find it very difficult to support any lengthy reauthorization of the Defense Production Act that would leave the Executive with such enormous power to infringe on the economic freedoms of Americans short of true emergency conditions. At the very least, the Act should be amended to limit the authority of the President to order rationing only in situations where the Congress has authorized such use, by Joint Resolution, or in time of war.

PHIL GRAMM.

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